Supreme Court, U.S.
FILED
APR 27 2001

No. 00-758

In the Supreme Court of the United States

UNITED STATES POSTAL SERVICE, PETITIONER

v.

MARIA A. GREGORY

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: NOVEMBER 13, 2000
CERTIORARI GRANTED: FEBRUARY 20, 2001

50 pp

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UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

No. 00-3123

UNITED STATES POSTAL SERVICE, PETITIONER

v.

MARIA A. GREGORY

DOCKET ENTRIES

ENTRY NO.	DOCKET NUMBER
1.	PETITIONER'S STATEMENT CONCERNING DISCRIMINATION. (SELECTED 01) (CS-01/10/00) FILED: 01/07/00 (EDD 01/10/00 (JV) 00-3123
2.	CERTIFIED LIST FROM MSPS. (MS-01/13/00) FILED: 01/18/00. (EDD 01/21/00 BY SPP) 00-3123
	* * * * *
10.	AFFIRMED-IN-PART, VACATED-IN-PART AND REMANDED. PRECEDENTIAL OPINION BY: J. CLEVENGER,

JUDGMENT ENTERED: 05/15/00. NO COSTS. OPINION SENT TO PARTIES: 05/15/00. (EDD 05/15/00 BY KSH) 00-3123

* * * * *

11. RESPONDENT - PETITION FOR RE-HEARING [NPF] (MS-06/29/00) FILED: 06/29/00 PETITION CIRCULATED: 06/30/00 PETITION: DENIED ON 07/13/00. (EDD 07/13/00 BY AV) 00-3123

REGIONAL ARBITRATION PANEL

USPS CASE NO: H94N-4H-D 97090945
GTS NO: 036580

IN THE MATTER OF THE ARBITRATION

BETWEEN

UNITED STATES POSTAL SERVICE

AND

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

[Filed: Aug. 25, 1999]

BEFORE: RAYMOND L. BRITTON, *Arbitrator*

APPEARANCES:

For the U.S. Postal Service:	Jim Hildreth
For the Union:	Judy Willoughby
Place of Hearing:	U.S. Post Office
Date of Hearing:	July 20, 1999
Record Closed:	July 20, 1999

AWARD:

For the reasons given the grievance is sustained and it is directed that the seven-day suspension subsequently unilaterally reduced to a Letter of Warning be expunged from the Grievant's record.

Date of Award: August 20, 1999

/s/ RAYMOND L. BRITTON
RAYMOND L. BRITTON

ISSUE

Was there just cause to issue the 7-day suspension that was unilaterally reduced through a Step 2 decision to a Letter of Warning?

HISTORY OF THE PROCEEDINGS

The parties failed to reach agreement on this matter, and it was submitted to arbitration for resolution. Pursuant to the contractual procedures of the parties, the undersigned was appointed as Arbitrator to hear and decide the matter in dispute.

At the commencement of the hearing, it was stipulated by the parties that this matter was properly before the Arbitrator for decision and that all steps of the arbitration procedure had been followed and that the Arbitrator had the authority to render the decision in this matter. After the hearing, it was agreed that the United States Postal Service (hereinafter referred to as "Employer") and the National Association of Letter Carriers, AFL-CIO (hereinafter referred to as "Union") would present oral closing arguments in support of their respective positions.

SUMMARY STATEMENT OF THE CASE

Maria A. Gregory (hereinafter sometimes referred to as "Grievant") is a Letter Technician at the Hinesville, Georgia Post Office. On April 23, 1997, Shawn A. Thompson, Supervisor Customer Services, issued a memorandum to Maria A. Gregory, Subject: Notice of 7

Day Suspension which states in relevant part as follows (Joint Exhibit No. 2):

* * *

You are hereby notified that you will be suspended for a period of seven (7) calendar days beginning on May 17, 1997. You are to return to duty at your regularly scheduled reporting time on your first regularly scheduled day following the suspension.

CHARGE: INSUBORDINATION

On Monday, April 7, 1997, I instructed you to case your route before leaving. I repeated these instructions and each time you stated that you would not stay. You stated your child was ill and you had to get an appointment. In spite of my repeated instructions to case your route before leaving you did in fact leave without following my instructions. In this instance you were insubordinate and charged accordingly.

You have the right to file a grievance under the grievance arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of this notice.

* * *

A grievance was filed protesting the Notice of 7 Day Suspension and a Step 1 meeting held and decision rendered on May 3, 1997 by Shawn A. Thompson denying the grievance.

Pursuant to Article 15 of the National Agreement, the grievance was appealed to Step 2 of the grievance procedure alleging a violation of, but not limited to, Articles 15, 16 and 19 of the National Agreement and stating in relevant part as follows (Joint Exhibit No. 2):

> **FACTS:** WHAT HAPPENED—Grievant issued a 7-day suspension charged with insubordination on Wednesday, 23 Ap 97.
>
> **UNION CONTENTIONS:** REASONS FOR GRIEVANCE—Untimely discipline. Macon policy on insubordination not followed. Grievant not given direct orders nor management informed grievant of failing to follow instructions—after repeated similar incidents occurred. Discipline unwarranted. Requested supporting documentation not provided.
>
> **CORRECTIVE ACTION REQUESTED:** Cease and desist. Grievant made whole—all records and files cleared. Grievant made whole of all and any lost wages.

On May 13, 1997, Postmaster Bill Davis in a memorandum to William S. Davis, President, Local 4944, Subject: Step 2, Grievance Decision, Maria A. Gregory, stated in relevant part as follows (Joint Exhibit No. 2)

> * * *
>
> *Step 2, hearing was held on May 9, 1997, concerning the grievance identified above.*
>
> *The grievance alleges a violation of Articles 15, 16 and 19.*

> *Union Contentions*
>
> *Untimely discipline, Discipline unwarranted.*
>
> *Facts & Management Decision*
>
> *Just cause does exist. Union does not deny the facts surrounding the April 7, 1997 incident. However, after reviewing the seriousness of the grievant's actions, the suspension is reduced to a Letter of Warning.*
>
> *The grievant has not served the suspension. Therefore, no wages were lost. The requested remedy is inappropriate and denied.*
>
> * * *

On May 22, 1997, William S. Davis in a letter to Bill Davis, Postmaster, stated in relevant part as follows (Joint Exhibit No. 2):

> * * *
>
> *Pursuant to Article 15, Section 2, Step 2.g. of the National Agreement, this letter of corrections and additions shall be included as part of the above referenced file, in response to your Step 2 decision, dated 13 May 1997 and received 14 May 1997.*
>
> *I submit the following corrections for the file:*
>
> *The union has not admitted to any "facts surrounding the April 7, 1997 incident." The union does not remember the "facts" the way management has outlined.*

Management withdrew the seven day suspension at Step 2 as it annotated on the upper top portion of the Standard Grievance Form. However, management had also prepared a letter stating that "no further action would be taken against the United States Postal Service concerning this matter" and was signed by the Union President unaware that grievant had intended/ initiated an Employee Equal Opportunity complaint. Employee did not sign document wavering any rights to EEO process. Management would not provide the union with a copy of said letter.

I submit the following additions for the file:

Grievant was disparately treated when other employees in the same situation have not been denied time to seek medical care/treatment for their dependant(s):

Paula Hall has been called in from street duty when her child was taken ill on May 7 1997.

Diane Cantrell and Melinda, rural carriers have received permission to take care of their child when taken ill.

Mark Hall has been granted time to tend to his ill mother (now deceased).

Lynnette Wynn, city carrier, has not been denied time to take care of her children when they become ill.

Bill Davis, City Carrier, allowed to go home on April 19, 1997—absence of child care provider.

Archie Burson, City Carrier, allowed to take care of his daughter in March/April time frame.

Management read the letter of suspension three times to grievant. Initial reading was done on May 23, 1997. On the same day—that afternoon—Ms. Shawn Thompson, Supervisor of Customer Services had Ms. Diane Smith, 204-B for clerk craft, sign the bottom portion of the 7-day notice of Suspension to acknowledge her witnessing grievant electing not to sign receipt of letter during the morning session. Grievant did not accept another copy with 204-B's signature—Ms. Smith was not a witness in the meeting; therefore, falsifying a document. On May 26, 1997, Ms. Thompson recd the letter once again stating that the first time the letter was read should be discarded as though it never happened. The letter from which she read from now had evidence where management had whited out Ms. Smith's signature.

During Step 1 meeting Ms. Thompson was unfamiliar with management's request for discipline letter. She stated all she was familiar with is what she puts down on her notes and the notes she makes have a different meaning from what is placed on discipline. Disciplinary actions are FAXED to Macon by Postmaster, Bill Davis, Macon prepares discipline letters and are returned to her for administrating.

Ms. Thompson was unfamiliar with Macon's policy on points to remember when "an employee refuses to carry out instructions" and did not follow the required outline.

Management intended to place grievant in jeopardy and endangering the health of a child.

Management "DID NOT" specifically state that he/she may be removed for insubordination if the instructions were not carried out immediately.

Grievant asked for ample time to obtain medical care for her dependent and would return to complete her duties as she did. Although she expressed her intent, management assigned another T-6 to complete casing grievant's route and to distribute in four parts for auxillary assistance. Grievant's child was out of school for five days due to her illness; grievant reported to work as a result of harassment from management.

Discipline towards grievant is predetermined for her union activities, employee equal opportunity activities, and for previously filing a sexual harassment compliant against a co-worker.

Management has refused to provide the union with all relevant information concerning this discipline.

On May 27, 1997, the grievance was appealed to Step 3 of the grievance procedure, alleging a violation of, but not limited to, Articles 15 and 16 and as reasons for the

appeal stated in relevant part as follows (Joint Exhibit No. 2):

* * *

Disparate treatment—endangering the health of a child. Supervisor did not state, at anytime, grievant was being insubordinate or consequences of insubordination as outlined by Macon district policy. Postmaster influenced Supervisor's decision for discipline. Management retaliation for grievant's active involvement in union activities, (Union Steward), as a participating in EEO activities and for charges brought on a co-worker for sexual harassment.

* * *

On August 15, 1997, Bernard U. Richardson, Labor Relations Specialist, Southeast Area, in a memorandum to Mr. Matthew L. Rose, National Business Agent, Subject: Regional Grievance Decision, stated in relevant part as follows (Joint Exhibit No. 2):

* * *

After considering all available evidence in the record and that offered by the union at the Step 3D hearing on August 13, 1997, it is my decision to deny the grievance.

In this case, the grievant was issued a seven (7) day suspension for, (1) insubordination. Evidence in the file indicates the grievant was guilty as charged. On Monday, April 7, 1997, the grievant was instructed to case his route before

leaving. The instructions were repeated and each time the grievant stated he would not stay. The grievant stated her child was ill and she had to get to an appointment. In spite of the instructions being repeated, the grievant did not follow the supervisors instructions. The Grievant's actions were in violation of section 666 of the Employee and Labor Relations Manual. The grievant is aware of her responsibilities in regards to following instructions and was charged accordingly. Therefore this grievance is denied.

* * *

On August 25, 1997, the grievance was appealed to arbitration.

POSITION OF THE PARTIES

The Position of the Employer

It is the position of the Employer that there was just cause for the issuance of the 7-day suspension subsequently reduced to a Letter of Warning. The Employer contends that despite being repeatedly instructed by her supervisor to case her route before leaving, the Grievant stated that she would not stay as her child was ill and she had to get to an appointment. The Employer further contends that the Grievant failed to follow instructions and that her actions were in violation of Section 666 of the Employee and Labor Relations Manual. Finally, the Employer contends that the Grievant never informed management that it was an emergency situation or that the Grievant's daughter needed medical attention.

The Position of the Union

The Union takes the position that management has the burden of proof and did not have just cause to issue a seven-day suspension on April 23, 1997, subsequently reduced to a Letter of Warning. The Union contends that no direct order was given to the Grievant nor was it stated that she may be removed for insubordination. The Union contends that the action of management was disparate, arbitrary and punitive. The Union further contends that there was no insubordination but only a misunderstanding. Finally, the Union contends that there may be an unwritten rule that employees are to follow the instructions of their supervisor but on this day there were no clear instructions given the Grievant and the Grievant came within the health related exception to the rule.

OPINION

In the resolution of this matter, the Arbitrator is called upon to determine whether under the circumstances presented, the Grievant may justifiably be found to have been insubordinate to Supervisor Shawn Thompson on Monday, April 7, 1997.

Shawn Thompson, Supervisor of Customer Service, testified that on the morning of April 7, 1997, the Postmaster told her that the Grievant would have to leave early that day because her daughter is sick. After being advised by the Postmaster that the Grievant would have to leave early that day, she went to the Grievant's case and said to the Grievant that she would have to case city route 13 and divide it up so that other carriers could deliver the route and then she could leave for the day. The Grievant replied that she would

not be able to case the route and that she would have to leave early. Supervisor Thompson states that she said nothing by way of response to the Grievant. She states that over the period of the morning this was talked about with the Grievant at least three or four times. In her discussions with the Grievant, she explained that route 13 had to be split before the Grievant left. She testified that the situation would have been different and she would have told the Grievant to go had the Grievant told her she had a 9:45 appointment or that her child was in grave need of medical attention because she could then make arrangements as to what to do with the route. The Grievant, however, never said this nor did she say that this was an emergency situation and her child needed medical attention. When she explained to the Grievant that she needed to stay, the Grievant continued to say that she had to leave. The Supervisor testified that she then went to the Union President, Bill Davis, and explained this to him and why the Grievant needed to stay. At her request, Mr. Davis talked to the Grievant. When Davis finished talking to the Grievant, she passed Davis in the exit door and he said she is leaving, she has to go. The Grievant was in the parking lot in her car ready to leave and she called out the Grievant's name and explained to the Grievant that she had to case route 13 and split it. When the Grievant said that she had to go, she states that she told the Grievant that if you go, you realize you will be A.W.O.L. She admits that the Grievant told her that she would be returning after she took her daughter to the doctor. The Grievant returned to the Post Office about two hours later and carried her route.

Based on the testimony of Supervisor Thompson, it is difficult for the Arbitrator to find that the Employer has met its burden of establishing the proof of the charge that the Grievant was insubordinate. While she may have felt that she gave the Grievant a "direct order," she admittedly did not tell the Grievant that she was giving her a (direct) order. In failing to use that term or even saying to the Grievant that she will or must stay or exercising her authority with words of a similar nature, the Supervisor allowed a situation to develop which invited misunderstanding and was fraught with ambiguity as her words were capable of being understood in two or more possible ways. The Grievant testified that after she talked to the Union President and the Supervisor and was finally ready to leave, the final words of the Supervisor to her were to do what you have to do. The Grievant testified that when she left that day, it was her understanding that she had been given permission to leave.

It is the further testimony of Supervisor Thompson that as a supervisor she never gives direct orders as this is not part of her personality and she finds doing so demeaning to the other person. It is, however, a prerequisite to a finding of insubordination that it be shown that a supervisor used clear and understandable language that leaves no room for doubt that a subordinate is being ordered to accomplish a particular act. This requirement, in the judgment of the Arbitrator, is not satisfied by stating to an employee several times, as was done in this case, that the employee is needed to perform a particular task or tasks. Not only did the Supervisor not make it clear that she was issuing a direct order but the testimony indicates that the Supervisor never told the Grievant that she did not

have permission to leave. There is a conflict in the testimony as to whether the Supervisor told the Grievant that there would be a penalty if she left. While the Supervisor testified that she reminded the Grievant that she would be A.W.O.L. if she left, the Grievant denies that the Supervisor made this statement. As the Grievant is not charged with being A.W.O.L. however, it is found by the Arbitrator to be unnecessary to this opinion that he endeavor to determine whether the testimony of the Supervisor or the Grievant is the more accurate in this regard.

It is the burden of the Employer to show by the greater weight of the evidence that the Grievant was insubordinate. In the considered judgment of the Arbitrator, the evidence submitted by the Employer is not sufficient to satisfy this burden and the Arbitrator is therefore required to find that just cause did not exist for the issuance of the 7 day suspension subsequently reduced to a Letter of Warning.

In light of the above findings, it is deemed by the Arbitrator to be unnecessary that he determine whether the Grievant came within the health related exception to the rule that employees are required to follow the instructions of their supervisors or whether the Grievant was subjected to disparate treatment.

UNITED STATES POSTAL SERVICE
SOUTH GEORGIA DISTRICT

Macon, GA. 31213-9401

DATE: January 20, 1998

OUR REF: HR:JJones:dh:9401

SUBJECT: Appeal of Maria A. Gregory
Merit Systems Protection Board
Docket No. AT-0752-98-0261-I-1

TO: MERIT SYSTEMS PROTECTION BOARD
ATLANTA REGIONAL OFFICE
401 WEST PEACHTREE STREET N.W.
SUITE 1050
ATLANTA, GEORGIA 30308-3510

Attached is Agency's response to petition for appeal filed by Maria A. Gregory.

/s/ JIM JONES
JIM JONES
Labor Relations specialist
Macon, Georgia 31213-9401

Attachment

UNITED STATES POSTAL SERVICE
SOUTH GEORGIA DISTRICT

Macon, GA. 31213-9401

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LOCATION	DATE	DOCUMENT DESCRIPTION	SOURCE
1	01/20/98	Narrative Response	Jim Jones, Agency Rep.
3	01/20/98	Statement Regarding Formal Response	Jim Jones, Agency Rep.
4a	11/17/97	Letter of Decision	Tommy L. Caruthers, Senior Labor Relations Specialist
4b	09/18/97	Notice of Proposed Removal	Joe Cox, Supervisor/ Customer Services
5	01/20/98	Certificate of Service	Jim Jones, Agency Rep.

UNITED STATES POSTAL SERVICE
SOUTH GEORGIA DISTRICT

Macon, GA. 31213-9401

NARRATIVE RESPONSE

On September 19, 1997, the Appellant was issued a Notice of Proposed Removal charging failure to perform her duties in a satisfactory manner. The Notice of Proposed Removal cited three prior disciplinary actions. As stated in the proposal, the Appellant requested 3.5 hours of overtime/auxiliary assistance to deliver her route on September 13, 1997. This request was 1.30 hours more than what was needed.

On November 26, 1997, the Appellant received a Letter of Decision from Tommy L. Caruthers, Senior Labor Relations Specialist. Mr. Caruthers considered the response offered by the Appellant before issuing his decision. No plausible explanation was provided.

LABOR RELATIONS PROCESSING CENTER

[Seal omitted]

UNITED STATES
POSTAL SERVICE™

December 17, 1997

Mr. Matthew L. Rose
National Business Agent
National Association of Letter Carriers, AFL-CIO

Southeast Area Grievance
Appeal No. H94N-4H-D 97098237 DIST 310
Dated: 06/23/97 9732H
Grievant: GREGORY M HINESVILLE GA 31313-9998

Provision Allegedly Violated: 16. 4000/ 65.0500/65.0750

Subject: Regional Grievance Decision:

Dear Mr. Rose:

After considering all available evidence in the record and that offered by the union at the Step 3D hearing on December 16, 1997, it is my decision to deny the grievance.

In this case, the grievant was issued a fourteen (14) day suspension for, (1) delaying accountable mail and (2) failure to follow instructions and. Evidence in the file indicates the grievant was guilty as charged. On April 3, 1997, the grievant failed to deliver the mail as required. This action caused the mail to be delayed. On April 10, 1997, the grievant was given instructions regarding delaying mail to be delivered. Instructions were given to the grievant to call the office and speak

to the Supervisor or the Postmaster when a situation occurred as did on April 18, 1997. The grievant failed to follow these instructions. The grievant's actions were in violation of sections 112.21 of the M-41 Handbook and section 666.53 of the Employee and Labor Relations Manual. In addition, the grievant had been previously issued a seven (7) day suspension dated April 26, 1997 for insubordination. Under the circumstances, the fourteen (14) day suspension was issued for just cause. Therefore, this grievance is denied.

In our judgment, the grievance does not involve and interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement.

/s/ BERNARD U. RICHARDSON
BERNARD U. RICHARDSON
Labor Relations Specialist, Southeast Area

cc: District Office Macon, Ga.
Postmaster Hinesville, Ga.
[Address illegible]

LABOR RELATIONS PROCESSING CENTER

[Seal omitted]

UNITED STATES
POSTAL SERVICE™

December 17, 1997

Mr. Matthew L. Rose
National Business Agent
National Association of Letter Carriers, AFL-CIO

Southeast Area Grievance
Appeal No. H94N-4H-D 98010952 DIST 310
Dated: 10/06/97 9745H
Grievant: GREGORY M HINESVILLE GA 31313-9998

Provision Allegedly Violated: 16. 4000/65.0500/65.1900/65.0750/74.0000

Subject: Regional Grievance Decision:

Dear Mr. Rose:

After considering all available evidence in the record and that offered by the union at the Step 3D hearing on December 16, 1997, it is my decision to deny the grievance.

In this case, the grievant was issued a fourteen (14) day suspension for, (1) delaying accountable mail, (2) unauthorized overtime/failure to follow instructions and (3) failure to perform duties in a satisfactory manner/unauthorized overtime. Evidence in the file indicates the grievant was guilty as charged. On July 17, 1997, the grievant failed to deliver 3 certified pieces of mail to 734 Bacon Road. This action caused the mail to be delayed. On July 18, 1997, the grievant made 1.24 units

of unauthorized overtime; did not fill out a PS Form 3996 or a 1571 to curtail the mail. On July 19, 1997, the grievant made .62 units of overtime, and again did not request auxiliary assistance by use of a Ps Form 3996. On July 25, 1997, the grievant requested 3.5 hours of auxiliary assistance. The request was disapproved, however, the grievant was assisted by two employees, both taking 1.5 hour of auxiliary assistance from the grievant. In spite of this action, the grievant still made 1.6 hours of overtime. Again on July 26, the grievant made 1.6 hours of overtime after having requested 1.25 hours of assistance that was given to another employee. The grievant's actions were in violation of sections 112.2 of the M-41 Handbook and section 666.53 of the Employee and Labor Relations Manual. In addition, the grievant had been previously issued a letter of warning dated May 5, 1997 for insubordination. Under the circumstances, the fourteen (14) day suspension was issued for just cause. Therefore, this grievance is denied.

In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement.

/s/ BERNARD U. RICHARDSON
BERNARD U. RICHARDSON
Labor Relations Specialist, Southeast Area

cc: District Office Macon, Ga.
Postmaster Hinesville, Ga.
[Address illegible]

[Seal omitted]

OFFICER OF LABOR RELATIONS
UNITED STATES POSTAL SERVICE
SOUTH GEORGIA DISTRICT
451 [COLLEGE] ST
MACON GA 31213-9401

CERTIFIED MAIL #P 283 974 886

November 17, 1997

Maria Gregory
204 Elizabeth Street
Hinesville GA 31313-2115

RE: Notice of Decision, Ms. Maria Gregory, Hinesville GA.
Referencing Notice of Proposed Removal dated September 18, 1997

The following constitutes my decision regarding the above referenced notice which was issued to you, Ms. Maria Gregory, a city letter carrier of the Hinesville, Georgia Post Office. Consideration was given to your written answer issued by notice dated September 25, 1997 and your personal answer of November 14, 1997. Having considered both in conjunction with the charges levied against you, it is my decision is to uphold the removal. The reasons for my decision follow:

For the record, I am noting that, Mr. Jim Hildreth, Labor Relations Specialist, South Georgia District had originally been named as the deciding official in this action. However, due to your protesting his involvement, I was renamed as the deciding official. There was no disagreement to naming me as the deciding official in

that I had not been involved in this case prior to being named as the deciding official. This accounts for part of the delay in answering the charges.

Based on your oral and written presentation, it appears that your answer provides that, the infraction as charged was de-minimus and would not justify the action taken. You and your representative, Attorney E. Kontz Bennett, Jr., explained that, based on your analogy of the circumstances, the total time served on Route 4 equated to only .6 of an hour of additional time than what was requested. You further explained that, all procedures had been followed regarding obtaining authorization for auxiliary assistance, in accordance with the city carrier's handbook and that if you had been in error in your estimation, you would have called in to correct your estimation. All of this would have been in accordance with the M-41/M-39 handbooks which govern city delivery methods and practices. You referred to the charges as being frivolous, insubstantial and unsubstantiated. You charged that Mr. Bill Davis, Postmaster, who was present at our meeting, along with Mr. Joe Cox the issuing supervisor, as being behind all of this.

During our meeting, Mr. Cox explained that you had requested 3.5 hours of auxiliary assistance. He granted you 3 hours of auxiliary assistance, gave what he thought to be 3 hours of delivery time to three other carriers and accompanied you on the route. Based on Mr. Cox's account, you returned to the office 1.5 hours earlier than your route's scheduled end time. This would equate to an approximate 2 hour overestimation in time needed since Mr. Cox left a half hour of the time that you estimated you needed, to be delivered by you.

[You] offered that you had returned to the office 1.25 hours earlier than your scheduled end tour time. This flies in the face of your answer that there was only .6 tenth of an hour in dispute. *Even considering your account, this would still have been an over estimation of 1.75 hours which is too much for someone familiar with this route, especially considering that this is a route that you are familiar with and is one of your regular assignments.* I checked postal records prior to my leaving the Hinesville Georgia Post Office on the day of our meeting and found that you had been assigned to this route on the 4 previous work days. This is further proof that you were familiar with this route.

When repeatedly asked for an explanation as to why you made such a gross overestimation of overtime or auxiliary assistance needed, you offered no explanation that made sense. You continuously explained that you were recuperating from foot surgery and was slow. You explained other problems related to this route, such as this route being, partially, a military base and how occupants continuously moved which, made your estimation even more difficult. However, your explanation was offered to show why you had been slow in delivering the portion of the route that you did deliver. Yours was not to explain why you had made the overestimation. Why you made the overestimation is still unexplained. Mr. Cox on the other hand was impressed that you were attempting to use stalling tactics and still finished 2 hours earlier than what had been requested.

[You] offered, when questioned that, Mr. Cox, had never carried your route, but told you exactly what to

take off of your route by street name and address. He decided to give this portion of your route to three other carriers. He estimated this to be 3 hours work. Records revealed that you had records to prove that the three carriers who were given the work taken off of your route, carried the portions given to them in 2.91 hours. Mr. Cox, who had never carried the route missed his estimation by .08 of an hour. On the other hand, You, being familiar with this route, missed this estimation by approximately, 1.75 or 2 hours, depending on whose version that was used. The Postal Service normally allows for an approximate 15-20 minute difference in estimation. Yours was grossly over-stated.

The conclusion that must be drawn is that, Mr. Cox, who was had never carried the route but was familiar with city carrier work methods being a former city letter carrier, correctly estimated the time that was needed to be relieved as you requested. However, a carrier such as yourself, who regularly carries the route and had carried the route in the last 4 successive days, had overestimated the time by approximately (2) hours. *This shows that you overestimated the time needed to deliver the route on purpose for obvious reasons.*

[You] offered that you had been sent out on another route to deliver some mail when you returned early. Mr. Cox verified this in that you had returned to the office so much earlier than had been expected. This explains why your account of the amount of time spent working by you, and the three others who were given splits off of your route, equated to .6 of an hour over what you estimated. The time you offered, as a defense to your being close in your estimation, was exaggerated

by adding the time that you worked, after you returned to the office early, which you were sent back out to deliver on another route.

If Mr. Cox had not taken the time off of your route and accompanied you on the route, the evidence disclosed that you would have made the unjustified time. When questioned, Mr. Cox explained that the motive for you doing what you did was to make up for the suspension that you had been previously issued. No other explanation makes sense so I agree.

Based on the foregoing it appears that your removal will promote the efficiency of the Postal Service and is therefore warranted. Considering the elements of your past record which shows that you have engaged in similar conduct previously, have been forewarned, the nature of your infraction, your length of service and the other Douglas Factors, I find that your removal is warranted. Your removal will be made effective November 26, 1997[.]

As a preference eligible, you have the right to appeal this decision in writing to the U.S. Merit Systems Protection Board, Atlanta Regional Office, 401 West Peachtree Street, N.W. 10th Floor, Atlanta GA 30308-3510 within 20 calendar days from the effective date of this decision. If you appeal to the MSPB, you should state whether you do or do not wish a hearing and you should furnish me a copy of your appeal. For further information on appeals procedures, contact Jim Jones. Attached for your reference are a copy of the MSPB regulations and a copy of the appeal form.

If you appeal this action, you will remain on the rolls, but in a nonpay, nonduty status after the effective date

of this action, until disposition of your case has been reached either by settlement or through exhaustion of your administrative remedies.

If you appeal to the MSPB, you thereby waive access to any procedures under the National Agreement beyond Step 3 of the Grievance/Arbitration procedure. You have the right to file an MSPB appeal and a grievance on the same matter. However, if the MSPB issues a decision on the merits of your appeal, if an MSPB hearing begins, if the MSPB closes the record after you request a decision without a hearing, or if you settle the MSPB appeal you will be deemed to have waived access to arbitration. Further, if you have an MSPB appeal pending at the time the Union appeals your grievance to arbitration, or if you appeal to the MSPB after the grievance has been appealed to arbitration, you will be deemed to have waived access to arbitration.

You are entitled to a representative of your own choosing throughout your appeal. You and your representative, if he or she is a U.S. Postal Service employee, shall be afforded a reasonable amount of official time for preparation of your case if you and/or your representative are otherwise in a duty status.

If this action is overturned on appeal, back pay will be allowed, unless otherwise specified in the appropriate award or decision, *ONLY IF YOU HAVE MADE REASONABLE EFFORTS TO OBTAIN OTHER*

EMPLOYMENT DURING THE RELEVANT NON-WORK PERIOD. The extent of documentation necessary to support your back pay claim is explained in the ELM, Section 436.

/s/ TOMMY L. CARUTHERS
TOMMY L. CARUTHERS
Senior Labor Relations Specialist

Attachments: MSPB Regulations
MSPB Appeal Form
ELM Section, Section 436

Hinesville GA 31313-9998

[Seal omitted]

UNITED STATES
POSTAL SERVICE

September 18, 1997

SUBJECT: Notice of Proposed Removal

TO: Maria Gregory
City Letter Carrier
SSN: 451-94-4749
Hinesville GA 31313-9998

This letter is to serve as advance written notice that it is proposed to remove you no sooner than 30 calendar days from receipt of this notice. The reason for this action is:

CHARGE 1: Failure to Perform Your Duties in a Satisfactory Manner

Specifically, postal records indicate you requested 3.5 hours of overtime/auxiliary assistance on September 13, 1997 while assigned to case and carry route CR04. Based on a review of the mail volume and your scheduled leaving time I questioned you as to the need for such overtime/assistance. You acknowledged the need and the inability to case and carry the route with less amount of overtime/assistance. I provided you with 3 hours of auxiliary assistance and advised you I would ride the remaining portion of the route with you.

Records indicate you made your first delivery at 12:00 and made your last delivery at 15:00. Your scheduled

end of tour for September 13, 1997 was 16:30. Based on the time you requested as overtime/auxiliary assistance and the actual time utilized, you overestimated your workload by 1.30 hours. When questioned in regards to your actions you failed to provide any information to support your actions or explain the unnecessary request for overtime/assistance.

In arriving at the decision to remove you from the rolls of employment, I have given consideration to the following elements of your employment record.

- On May 13, 1997, you were issued a letter of warning for insubordination.
- On June 7, 1997, you were issued a 7-day suspension for delaying the mail and failure to follow instructions.
- On August 18, 1997 you were issued a 14-day suspension for 1) delaying accountable mail, 2) unauthorized overtime, 3) failure to follow instructions, 4) failure to perform your duties in a satisfactory manner.

You and/or your representative may review the material relied on to support the reasons for this notice at the Hinesville Post Office during the hours of 9:00 a.m. to 4:00 p.m. If you do not understand the reasons for this notice, contact me for further explanation.

You and/or your representative may answer this proposal within 10 days from your receipt of this letter, either in person or in writing or both, before James Hildreth, Labor Relations Specialist, U.S. Postal Service, 2 North Fahm St., Savannah GA 31402-9401. You

may also furnish affidavits or other written material to Mr. Hildreth within 10 days from your receipt of this letter. You will be afforded a reasonable amount of official time for the above purpose if you are otherwise in a duty status. After the expiration of the 10-day time limit for reply all the facts in the case, including any reply you submit, will be given full consideration before a decision is rendered. You will receive a written decision from Mr. Hildreth.

You have the right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of this notice.

/s/ WILLIAM J. COX
WILLIAM J. COX
Supervisor, Customer Services
Hinesville GA 31313-9998

Attachment

*I,*_____, *received this notice on* _____*Time* _____

[Illegible]

[Seal omitted]

UNITED STATES
POSTAL SERVICE

Hinesville, Georgia 31313

September 18, 1997

Subject: Step 2, Grievance Decision, Maria A. Gregory
USPS #1064
NALC #97-45H

To: William S. Davis
President, Local 4944
P O Box 1426
Hinesville, GA 31310-8426

Step 2 hearing was held on September 9, 1997 concerning the grievance identified above. The grievance alleges a violation of Articles 2, 15 & 19.

Union Contentions
Management does not have "just cause" to issue discipline. Prior elements are improperly cited.

Facts & Management Decision
The prior elements are properly cited. They are clearly related to the charges in the discipline. Insubordination and failure to follow instructions are related as is delaying the mail with delaying accountable mail.

Postal rules and regulations prohibit the actions of the grievant. The grievant was made aware of said rules and the consequences involved. The corrective action is progressive.

The union's contention that prior discipline, not yet adjudicated, can't be cited is wrong. If this were true the grievant would have immunity until adjudication.

"Just cause" is present. The grievant has not corrected the work deficiencies. Therefore, progressive corrective action is appropriate. Grievance is denied.

In addition, since the issuance of this suspension the grievant has continued to delay mail, failed to follow instructions and performed such that unauthorized overtime resulted. Specifically on August 12th and 15th, 1997, the grievant committed these same infractions. Clearly progressive discipline has not been sufficient to correct the deficiencies.

/s/ BILL DAVIS
BILL DAVIS
Postmaster

LABOR RELATIONS PROCESSING CENTER

[Seal omitted]

UNITED STATES
POSTAL SERVICE™

August 15, 1997

Mr. Matthew L. Rose
National Business Agent
National Association of Letter
Carriers, AFL-CIO

Southeast Area Grievance
Appeal No. H94N-4H-D
97090945 DIST 310
Dated: 06/02/97 9721H
Grievant: GREGORY M
HINESVILLE GA
31313-9998

Provision Allegedly Violated: 16. 4000/
65.0750/65.1400

Subject: Regional Grievance Decision:

Dear Mr. Rose:

After considering all available evidence in the record and that offered by the union at the Step 3D hearing on August 13, 1997, it is my decision to deny the grievance.

In this case, the grievant was issued a seven (7) day suspension for, (1) insubordination. Evidence in the file indicates the grievant was guilty as charged. On Monday, April 7, 1997, the grievant was instructed to case his route before leaving. The instructions were repeated and each time the grievant stated he would not stay. The grievant stated her child was ill and she had to get to an appointment. Inspite of the instructions being repeated, the grievant did not follow the supervisors instructions. The grievant's actions were

in violation of section 666 of the Employee and Labor Relations Manual. The grievant is aware of her responsibilities in regards to following instructions and was charged accordingly. Therefore this grievance is denied.

In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement or any supplement thereto which may be of general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement.

/s/ BERNARD U. RICHARDSON
BERNARD U. RICHARDSON
Labor Relations Specialist, Southeast Area

cc: District Office Macon, Ga.
Postmaster Hinesville, Ga.
[Address illegible]

HINESVILLE GA 31313-9998

[Seal omitted]

UNITED STATES
POSTAL SERVICE

August 7, 1997

SUBJECT: Notice of Fourteen (14) Day Suspension

TO: Maria Gregory
SSN: 451-94-4749
City Carrier
Hinesville GA 31313-9998

You are hereby notified that you will be suspended for a period of (14) fourteen calendar days beginning on August 18, 1997. You are to return to duty at your regularly scheduled reporting time on your first regularly scheduled day following, August 31, 1997.

CHARGE 1: Delaying Accountable Mail

On 7/17/97 you were delivering mail on CR11. You failed to deliver 3 certified pieces to 734 Bacon Road. Your actions caused mail to be delayed. This is a serious offense that the Postal Service does not take lightly. You are hereby charged accordingly.

CHARGE 2: Unauthorized Overtime/Failure to Follow Instruction

On Friday 7/18/97, you were assigned to CR7. On this day, you made 1.24 units of unauthorized overtime. You did not complete a PS Form 3996 or 1571 to curtail mail.

On 7/19/97, you made .62 units of unauthorized overtime. You did not request auxiliary assistance via PS Form 3996. By virtue of the above listed unauthorized overtime, you are being charged accordingly.

Charge 3: Failure to Perform Your Duties in a Satisfactory Manner/Unauthorized Overtime

On 7/25/97 you requested 3.5 hours of auxiliary assistance. Your request was disapproved but I sent K. Chipple and A. Burson to assist you by both taking 1.5 hours of auxiliary assistance off of you. In spite of this you still made 1.6 hours of overtime. Part of the reason that this occurred was due to the fact that you took all of the "hold mail" out to attempt delivery, which is contrary to the purpose of holding mail. In addition, you cleaned out cluster boxes which I told you was the responsibility of the regular carrier and not the T-6 carrier which you were.

On 7/26/97 you requested 1.25 hours of auxiliary assistance. I gave the auxiliary assistance to A. Burson. In spite of this you still made 1.56 hours of overtime. In addition to this, when Mr. Burson came to get the split that he was to carry off of your route you would not give him the mail causing him to have to get the mail himself. After you returned to the office, it was found that you had taken out hold mail again and mail that you had cleaned out of customers boxes which as previously explained was the regular carrier's duty.

The above two cited incidents chronicle behavior intended to expand your street time for the purpose of making overtime. In this regard you are accordingly charged.

In addition, the following prior elements for your past record have been considered in arriving at this decision.

- 5/13/97 Letter of Warning Insubordination
- 6/7/97 7 Day Suspension Delaying Mail/Failure to Follow Instructions

You have the right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of this notice.

/s/ WILLIAM J. COX
WILLIAM J. COX
Supervisor Customer Services
Hinesville GA 31313-9998

I,_____received this notice on____Time _____

Employee refused to sign, Witness by Bill Davis 8-7-97 at 4:38 pm

[Seal omitted]

UNITED STATES
POSTAL SERVICE

Hinesville, Georgia 31313-9998

June 7, 1997

Subject: Step 2, Grievance Decision, Maria A. Gregory
USPS #1051
NALC # 97-32H

To: William S. Davis
President, Local 4944
P O Box 1426
Hinesville, GA 31310-8426

Step 2: hearing was held on May 29, 1997, concerning the grievance identified above. The grievance alleges a violation of Articles 15 and 16.

Union Contentions
Grievant treated disparately.

Facts & Management Decision
"Just Cause" exist for the suspension which is hereby reduced from 14 calendar days to 7 calendar days. The 7 day suspension will begin June 28, 1997 and end July 4, 1997. The unions contentions are without merit. The previous Letter of Warning can we relied upon because it has not been overturned at any step in the grievance procedure. Grievant's explanation of events does not excuse her actions. Had grievant been performing

duties as required by the M-41 the mail would not have been delayed. Grievance is denied.

/s/ BILL DAVIS
BILL DAVIS
Postmaster

cc: Maria A. Gregory

[Seal omitted]

UNITED STATES
POSTAL SERVICE

Hinesville, Georgia 31313-9998

May 13, 1997

Subject: Step 2, Grievance Decision, Maria A. Gregory
USPS #1051
NALC # 97-21H

To: William S. Davis
President, Local 4944
P O Box 1426
Hinesville, GA 31310-8426

Step 2, hearing was held on May 9, 1997, concerning the grievance identified above. The grievance alleges a violation of Articles 15, 16 and 19.

Union Contentions
Untimely discipline, Discipline unwarranted.

Facts & Management Decision
Just cause does exist. Union does not deny the facts surrounding the April 7, 1997 incident. However, after reviewing the seriousness of the grievant's actions, the suspension is reduced to a Letter of Warning.

The grievant has not served the suspension. Therefore, no wages were lost. The requested remedy is inappropriate and denied.

/s/ BILL DAVIS
BILL DAVIS
Postmaster

cc: Maria A. Gregory
Grievant

HINESVILLE GA 31313-9998

[Seal omitted]

UNITED STATES
POSTAL SERVICE

April 30, 1997

SUBJECT: Notice of Fourteen (14) Day Suspension

TO: Maria Gregory
City Letter Carrier
SSN: 451-94-4749
Hinesville GA 31313-9998

You are hereby notified that you will be suspended for a period of fourteen (14) calendar days beginning June 21, 1997. You are to return to duty at your regularly scheduled reporting time on your first regularly scheduled day following July 4, 1997.

CHARGE 1: Delaying of Mail

On April 18, 1997, you brought mail back to the office. This mail was from route C-13. You cased and carried C-16 on this day. After receiving help on the street you returned with the portion of C-13 that you were to deliver. Your actions caused this mail to be delayed and you are charged accordingly.

CHARGE 2: Failure to Follow Instructions

On April 10, 1997, you were given instructions regarding delaying mail delivery. Instructions were given to call the office and speak to a supervisor or Postmaster when a carrier had a situation like you had on April 18, 1997. Your failure to follow these instruc-

tions contributed to the unnecessary delay of mail. Therefore, you are charged accordingly

In addition, the following prior elements of your past record have been considered in arriving at this decision.

• On April 26, 1997 you were issued a 7-day suspension for insubordination.

You have the right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of this notice.

/s/ SHAWN A. THOMPSON
SHAWN A. THOMPSON
Supervisor, Customer Svcs.
Hinesville, GA 31313-9998

I,_____received this notice on____Time _____

Employee refused to sign. Witness: Bill Davis 4-30-97 6:18 pm

[Seal omitted]

UNITED STATES
POSTAL SERVICE

Hinesville, Georgia 31313-9998

April 23, 1997

Subject: Notice of 7 Day Suspension

To: Maria A. Gregory
City Letter Carrier
SSN: 451-94-4749
Hinesville, GA 31313-9998

You are hereby notified that you will be suspended for a period of seven (7) calendar days beginning on May 17, 1997. You are to return to duty at your regularly scheduled reporting time on your first regularly scheduled day following the suspension.

CHARGE: INSUBORDINATION

On Monday, April 7, 1997, I instructed you to case your route before leaving. I repeated these instructions and each time you stated that you would not stay. You stated your child was ill and you had to get an appointment. In spite of my repeated instructions to case your route before leaving you did in fact leave without following my instructions. In this instance you were insubordinate and charged accordingly.

You have the right to file a grievance under the grievance/arbitration procedure set forth in Article 15

of the National Agreement within 14 days of your receipt of this notice.

/s/ SHAWN A. THOMPSON
SHAWN A. THOMPSON
Supervisor, Customer Services

I,_____received this notice on____Time _____

Employee refused to sign, Witness by Bill Davis 4-26-97 at 10:55